

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

In re: §  
ZIPCO INTERNATIONAL PRODUCTS § CASE NO. 08-60258-BP-11  
COMPANY, INC. §  
§ Chapter 11  
Debtor §  
§ Hearing: October 7, 2008 at 9:30 a.m.

**TEXAS WORKFORCE COMMISSION'S RESPONSE IN SUPPORT OF  
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS' MOTION TO DISMISS**

The Texas Workforce Commission (“TWC”), appearing through the Texas Attorney General’s office, files this Response in Support of the Texas Comptroller of Public Account’s (“Comptroller”) Motion to Dismiss [Docket No. 277], and would show:

1. Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code on March 26, 2008.
2. Debtor is delinquent with unemployment taxes due post-petition to the TWC; cause for dismissal under § 1112(b)(4)(I) of the Bankruptcy Code. Specifically, Debtor has not paid unemployment taxes for the post-petition portion of the first quarter 2008 or for the second quarter 2008. On September 3, 2008 the TWC filed an administrative expense proof of claim in the amount of \$2,457.25 [Claim Register No. 57-2] for the post-petition delinquencies.
3. Debtor is operating in violation of 28 U.S.C. §§ 959(b) and 960 which require a debtor in possession to manage and operate property of the estate according to the requirements of state law in the same manner the owner or possessor of such property would be bound to do outside of bankruptcy. The Debtor is not in compliance with 28 U.S.C. §§ 959(b) and 960 because Debtor has failed to pay post-petition unemployment taxes when due. Congress amended § 960 in 2005 to

explicitly require that post-petition taxes "be paid on or before the due date of the tax under applicable non-bankruptcy law." Here, Debtor is required to remit Texas unemployment taxes on a timely basis accompanied by sworn returns pursuant to the Unemployment Compensation Act.

4. Pursuant to § 1112(b), upon the request of a party in interest, and after notice and a hearing, the court shall dismiss a Chapter 11 case or convert a Chapter 11 case to a case under Chapter 7, whichever is in the best interest of the creditors and the estate, for cause, including failure to pay post-petition taxes when due. Courts have held the failure to pay post-petition taxes when due is cause for dismissal under 11 U.S.C. § 1112(b). *See Berryhill v. United States (In re Berryhill)*, 189 B.R. 463 (N.D. Ind. 1995), citing *In re Hinchcliffe*, 164 B.R. 45 (Bankr. E.D. Pa. 1994) and *In re Vela*, 87 B.R. 229 (Bankr. D. P.R. 1988). *See also In re Koval*, 205 B.R. 72 (Bankr. N.D. Tex. 1996)(citing *Berryhill* in dismissing a Ch. 13 case for failure to timely pay post-petition taxes). Congress codified such holdings in 2005 with the addition of § 1112(b)(4)(I) which expressly states that, "failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief" is "cause" for dismissal.

5. Should the court, in its discretion, determine that conversion of this case to Chapter 7 is in the best interest of creditors, as opposed to dismissal, then the TWC requests that such alternative relief under § 1112(b) be granted.

WHEREFORE, the TWC requests that this case be dismissed or that alternative relief under § 1112(b) be granted, and for such further relief as is just.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

KENT C. SULLIVAN  
First Assistant Attorney General

DAVID S. MORALES  
Deputy Attorney General for Civil Litigation

RONALD R. DEL VENTO  
Assistant Attorney General  
Chief, Bankruptcy & Collections Division

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*/s/ Kimberly Walsh*  
KIMBERLY WALSH  
Assistant Attorney General  
Texas State Bar No. 24039230  
Bankruptcy & Collections Division  
P. O. Box 12548  
Austin, TX 78711-2548  
Telephone: (512) 475-4863  
Facsimile: (512) 482-8341  
kimberly.walsh@oag.state.tx.us

ATTORNEYS FOR THE TEXAS  
COMPTROLLER OF PUBLIC ACCOUNTS

**CERTIFICATE OF SERVICE**

I certify that on October 2, 2008, a true copy of the foregoing was served by the method and to the following parties as indicated:

By Regular First Class Mail:

Zipco International Products Company, Inc.  
6208 SH 42 North  
Kilgore, TX 75663

By Electronic Means as listed on the Court's ECF Noticing System:

George Manion Conner fileconner@spyderinternet.com.  
Donald W. Cothern doncothern@sbcglobal.net  
Jeffrey R. Cox jcox@slmpc.com  
Dewey M. Dalton dmd@daltonlawfirm.net  
Jeffrey S. Davis sharonlee3157@sbcglobal.net  
Patrick D. Devine pdevine@pdevinelaw.com

Dennis A. Dressler ddressler@dresslerpeters.com  
Lew Dunn dunn@texramp.net  
Michael Patrick Duray mduray@ont.com, mduray@ont.com  
Eric A. Liepins eric@ealpc.com, martha@ealpc.com  
John Mayer jmayer@rossbanks.com  
William Thomas McLain wtm@reaganmclain.com  
John Christopher Middleton john.middleton@haynesboone.com  
Carrie R. Mitchell cmitchellesq@earthlink.net  
Mitch Motley mmotley@ccfww.com, cmiley@ccfww.com  
Timothy W. O'Neal Timothy.W.O'Neal@USDOJ.GOV,  
USTPRegion06.TY.ECF@USDOJ.GOV  
Timothy W. O'Neal USTPRegion06.TY.ECF@USDOJ.GOV  
Blake Rasner brasner@haleyolson.com, jrostockyj@haleyolson.com;cfarris@haleyolson.com  
Michael Reed dgibson@mibalaw.com;danielle.goff@mibalaw.com;kmorriss@mibalaw.com  
Scott Alan Ritcheson scottr@rllawfirm.net, andreah@rllawfirm.net;mistyb@rllawfirm.net  
Andrea F. Roosth andrear@lawbbj.com  
Sidney H. Scheinberg sid@gpm-law.com, sidscheinberg@sbcglobal.net;;swu@gpm-law.com  
Joshua P. Searcy jrspc@jrsearcycom, joshsearcy@jrsearcycom  
Dean Allen Searle klled218@gmail.com  
Tom W. Sharp tsharp@blalack.com  
Sharon H. Sjostrom ssjostrom@blalack.com  
Laurie A Spindler laurie.spindler@publicans.com,  
Matilde.Alvarado@publicans.com;Dallas.Bankruptcy@publicans.com  
Joe K. Thigpen joethigpen@yahoo.com  
Stephen G. Wilcox gcolvilleedtx@basselwilcox.com, aaustin@basselwilcox.com

/s/ Kimberly Walsh  
KIMBERLY WALSH